

Exhibit G

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 In the Matter of a Search Warrant
4 Application to the CUAD Instagram
Account.

25 Mag. 997

Telephone Conference

5 -----x

6 New York, N.Y.
7 March 28, 2025
11:00 a.m.

8 Before:

9
10 HON. SARAH NETBURN,

U.S. Magistrate Judge

11 APPEARANCES

12 ALEC C. WARD
13 U.S. Department of Justice
14 Criminal Section, Civil Rights Division

15 Also Present:

 FBI

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1 THE COURT: Hi. This is Judge Netburn.

2 Good morning.

3 Somebody's phone is cracking. I wonder if before we
4 get started we can just figure out whose phone that is.

5 MR. WARD: It began when the first court line joined,
6 your Honor.

7 THE COURT: I can see who it --

8 (Indiscernible overlap)

9 THE COURT: I can see which phone number is making the
10 noise, and it's one that's listed as anonymous. So we'll
11 figure out who that is and ask that person to hang up and call
12 back.

13 Could everybody mute their phones.

14 MECHANICAL VOICE: *Is now exiting.*

15 THE COURT: All right. There's a [REDACTED] number; that
16 is not the problem. There's a [REDACTED] number; that is not the
17 problem. There is my deputy and my chambers on the phone.
18 That is not the problem. So whoever is the other person, maybe
19 it's the agent --

20 Yes. OK.

21 MECHANICAL VOICE: *Is now exiting.*

22 THE COURT: OK. I think that was our agent, so
23 obviously we want to get [REDACTED] back. Let's give [REDACTED] an
24 opportunity to call back in; hopefully [REDACTED] line will be clear.

25 MR. WARD: Yes, your Honor. I'm going to send [REDACTED] a

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1 message right now.

2 THE COURT: Great.

3 (Indiscernible overlap)

4 THE COURT: Thank you.

5 MECHANICAL VOICE: *Is now joining.*

6 THE COURT: I think [REDACTED] may have just joined us.

7 [REDACTED], did you just join?

8 [REDACTED]: Hi, your Honor. Yes. This is [REDACTED]

9 [REDACTED].

10 THE COURT: Right.

11 OK. That seems to be slightly better. And I'll just
12 ask if everybody can mute their line unless they are speaking.

13 Again, if everyone could just mute their line --

14 [REDACTED], that's your phone.

15 [REDACTED]: I apologize, your Honor. (inaudible)

16 THE COURT: OK. Thank you.

17 MECHANICAL VOICE: *Is now exiting.*

18 THE COURT: OK. Hopefully [REDACTED] can call back in.

19 And then if not, Mr. Ward, maybe you could just patch

20 [REDACTED] in.

21 MR. WARD: Yes, I can. I can attempt that (inaudible)
22 if [REDACTED] second line doesn't work.

23 THE COURT: OK. Thank you. We'll just stand by for
24 one more second.

25 All right. I think this is not going to work with [REDACTED]

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1 [REDACTED] on this particular phone line. Maybe, Mr. Ward, you can
2 call [REDACTED] and connect [REDACTED].

3 MR. WARD: I'll try that now.

4 THE COURT: OK. Thank you.

5 Agent [REDACTED], you should just hang up.

6 Mr. Ward, any luck?

7 MECHANICAL VOICE: *Is now exiting.*

8 *Is now joining.*

9 [REDACTED]: Hi, your Honor. This is [REDACTED],
10 trying from a different phone.

11 THE COURT: OK. Terrific.

12 All right. This is the matter of a search warrant
13 application to the CUAD Instagram account. I have assigned it
14 a docket number. That number is 25 Mag. 997.

15 Can I just ask for counsel to state their appearances,
16 please.

17 MR. WARD: Good morning, your Honor. Alec Ward, for
18 the government. On the line with me is (inaudible) Fitzgerald,
19 who is the principal deputy chief of the civil rights division,
20 criminal section. And we also, I believe, have [REDACTED]
21 from the FBI.

22 THE COURT: Thank you.

23 OK. This matter is on for the government's renewed
24 application for a warrant to search the contents and records of
25 an Instagram account as part of an investigation as to whether

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1 the user or users of the account have violated 18 U.S.C.
2 Section 875(c), which makes it a crime to transmit in
3 interstate commerce a communication that threatens to injure a
4 person.

5 In connection with this application, I have reviewed
6 the affidavit of FBI Special Agent [REDACTED]; the transcript
7 of the March 25, 2025, proceeding before district Judge John
8 Koeltl.

9 I'll just note for the record that the transcript
10 cover page states that it was held on January 25. I want to
11 confirm with the government that that is a typo and that the
12 conference was actually held on Tuesday, March 25.

13 Is that correct?

14 MR. WARD: Yes, your Honor.

15 THE COURT: OK.

16 In addition, I've reviewed a March 27, 2025, email
17 from AUSA Alec Ward, which provided me with the agent affidavit
18 and the March 25 transcript and four case citations with brief
19 discussions.

20 Mr. Ward, is there anything else that you intended for
21 me to review for today's proceeding?

22 MR. WARD: No, your Honor.

23 There was a brief submitted to Judge Koeltl. It was
24 after that hearing, you may have seen in the transcript a
25 reference to that; that was submitted under the government's

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1 misapprehension that this matter was ripe for district court
2 review and so largely focused on the review standard. We're
3 not asking that the Court consider that brief, and so we
4 haven't submitted it.

5 THE COURT: OK.

6 I'll note, first, that you and I spoke off the record
7 before this proceeding this morning to discuss procedural
8 matters, and I requested that you provide me with a letter
9 brief that informs the government's legal and factual position
10 in support of this warrant application. You declined to file a
11 letter because, you said, it would be too burdensome to get it
12 cleared by your supervisors and instead indicated that you
13 would email me case citations, which you have done, and that
14 you would otherwise rely on oral advocacy.

15 As you just noted, in reviewing the transcript, Judge
16 Koeltl made repeated reference to a 20-page memo that was
17 submitted to him, and he believed I should consider it. And at
18 the conclusion of that proceeding, you told Judge Koeltl that
19 you would provide that memorandum to me. But as you just
20 stated, that memo has not been provided to me so I don't have
21 the benefit of that analysis.

22 As I indicated, I've asked our clerk of court to open
23 a sealed case under docket number 25 Mag. 997, and I've
24 directed that the prior warrant applications from March 15 and
25 March 16 be docketed and denied and that the transcript from

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1 Judge Koeltl's proceeding also be docketed.

2 At the conclusion of this proceeding, I'll direct that
3 the renewed application before me, which I'm calling the second
4 amended warrant application, also be docketed along with the
5 transcript from this proceeding. But I will ask that Mr. Ward
6 submit to my chambers a copy of that 20-page memorandum that
7 was previously submitted to Judge Koeltl so that it can be made
8 part of the record. OK?

9 MR. WARD: Yes, your Honor. We will do that.

10 THE COURT: OK.

11 All right. Before we address the merits of the
12 application, I think it's important to cover some foundational
13 issues. The application for a search warrant is brought
14 pursuant to Federal Rule of Criminal Procedure 41. Rule 41(b)
15 provides a magistrate judge with authority to issue a warrant.
16 If a magistrate judge is not reasonably available, an
17 application can be brought to a judge of a state court of
18 record in the district. Given how the Southern District of New
19 York assigns matters, for all practical purposes, the
20 magistrate judge will always be reasonably available.

21 Rule 41(d) provides that after receiving an affidavit
22 or other information, a magistrate judge must issue the warrant
23 if there is probable cause.

24 Rule 41 does not require that the Court first place a
25 federal law enforcement officer under oath before considering

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1 the affidavit.

2 As a matter of practice, in this district, the law
3 enforcement officer is not placed under oath unless and until
4 the magistrate judge is satisfied that the affidavit
5 establishes probable cause and that the warrant should issue.

6 Only once the Court is satisfied that the affidavit
7 establishes probable cause does the Court place the officer
8 under oath and then sign the warrant.

9 Rule 41 does not require or even provide any mechanism
10 for a magistrate judge to issue a reasoned decision if the
11 judge determines that there is no probable cause to support the
12 issuance of a warrant. Although it happens exceedingly
13 infrequently in our district, when a magistrate judge denies a
14 warrant application, the judge simply advises the presenting
15 AUSA that the Court has not found probable cause and that the
16 warrant application is denied. The clerk's office notes that
17 the application has been denied; there's no on-the-record
18 ruling. That is what happened in this case, which is
19 consistent with the manner and form practiced in this district
20 for at least more than a decade.

21 Rule 41 also does not provide any mechanism to appeal
22 from the denial of a warrant application. In our district,
23 where a magistrate judge is not satisfied that the agent
24 affidavit establishes probable cause, the Court may permit the
25 agent to file an amended affidavit. This is what happened in

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1 this matter, where the AUSA filed the original warrant
2 application on Saturday, March 15, which the Court denied, and
3 then filed an amended warrant application on Sunday, March 16,
4 which the Court also denied. So I'm now considering a second
5 amended warrant application, which was submitted to me
6 yesterday, Thursday, March 27.

7 Finally, during your proceeding with Judge Koeltl, you
8 indicated that if I denied the second amended warrant
9 application, you would seek an appeal under 28 U.S. Code
10 Section 636(b).

11 Section 636 considers the jurisdiction and authority
12 of a magistrate judge. Section 636(b) refers to matters that
13 are referred to a magistrate judge by a district judge and sets
14 forth the standards of review by a district judge of a
15 magistrate judge's decision, depending on whether that decision
16 was case-dispositive or not.

17 This matter has not been referred to me by a district
18 judge, nor could it be, because Rule 41 expressly and
19 exclusively vests the authority to issue a warrant in a
20 magistrate judge or a state court judge. So to the extent the
21 outcome of today's proceeding is adverse to the government and
22 you intend to appeal that decision, you must provide the Court
23 with some authority for such appeal, which I do not believe is
24 Section 636(b).

25 Moreover, because Rule 41 expressly vests authority to

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1 issue a warrant with a magistrate judge, to the extent your
2 appeal is more properly viewed as an application for a warrant
3 to the district judge, you're directed to provide authority
4 from this circuit for a district judge to issue a warrant in
5 the first instance.

6 Finally, I direct that to the extent the government
7 submits any subsequent warrant applications for this Instagram
8 account to a different judge, whether that's a district judge,
9 a magistrate judge or a state court judge, it must provide a
10 copy of today's transcript to that judge.

11 Mr. Ward, do you wish to be heard with respect to any
12 of these procedural matters that I've just discussed?

13 MR. WARD: Regarding the -- regarding the ripeness
14 issue of any review, to the extent it's available, I think
15 likely, understanding your Honor's representations about this
16 Court's regular practice, I would simply say there was no
17 disrespect or ill will intended by the government towards your
18 Honor's ruling. It may simply have been a matter of our
19 unfamiliarity as an office that hasn't routinely practiced in
20 this district for the last 25 years, to my knowledge, with the
21 Court's regular practice. And I'll just note there was no ill
22 will and disrespect intended towards this Court in the
23 government's assessment of what avenues were available to it at
24 the time.

25 We had reviewed with the Southern District of New York

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1 procedural posture of this matter and weren't confident that
2 sufficient jurisdiction existed for review by the district
3 court based on the ruling that had been issued by your Honor.
4 We accept your representations entirely that that's the normal
5 practice in the district. We apologize for any deviation.

6 THE COURT: No disrespect whatsoever?

7 People are free to appeal where there is an avenue of
8 appeal available. It was clear to me from the proceeding
9 before Judge Koeltl that he was particularly interested in
10 following all proper protocol and procedures, and in reviewing
11 this matter back to me, I thought it was worth making clear
12 that I am unaware of any mechanism that both requires any sort
13 of reasoned decision by a magistrate judge who determines that
14 there's not probable cause to justify the issuance of a warrant
15 or that there is any avenue of appeal from such denial. And
16 certainly to the extent there is some avenue of appeal, it is
17 not Section 636(b), because this matter was never referred to
18 this Court by the district judge. And so that statute would be
19 inapplicable.

20 (Indiscernible overlap)

21 MR. WARD: Nothing further.

22 THE COURT: Go ahead.

23 Oh, OK.

24 Now that we've covered some of the procedural issues
25 raised in the application, we can turn to the merits. Although

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1 I've indicated there is no obligation that the Court first
2 swear in the agent before considering the issue, because this
3 issue appeared to be of concern to Judge Koeltl, I'll do so
4 now.

5 [REDACTED], are you still with us?

6 [REDACTED]: Yes, your Honor, I am.

7 THE COURT: OK. I have an affidavit. It seeks to
8 search an Instagram account. Can you give me the name of the
9 Instagram account at issue here?

10 [REDACTED]: Yes, your Honor. It's @CUAPARPHDIDDIDEST.

11 THE COURT: Thank you.

12 All right. I have your agent affidavit. It was
13 submitted to me yesterday, March 27.

14 Do you have the same thing?

15 [REDACTED]: Yes, your Honor, I do.

16 THE COURT: OK. And I have your signature line on
17 page 26. Is that what you have?

18 [REDACTED]: I have page 25, your Honor.

19 THE COURT: OK. And are you looking at a PDF page or
20 a page numbering?

21 [REDACTED]: I'm looking at a page numbering.

22 THE COURT: Mr. Ward, please make sure that your agent
23 and I have the same document.

24 MR. WARD: Yes, Judge.

25 I believe, [REDACTED], you may be looking -- what we're

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1 calling, I suppose, the first amended application and the
2 second amended application are identical except for the
3 addition of two additional images. [REDACTED], I believe you
4 may be looking at the first amended application. I will
5 re-forward you the second amended application right now. Just
6 noting that the only difference, I think, is in -- the
7 difference in pagination accounts for the space taken up by an
8 additional image.

9 [REDACTED]: OK.

10 THE COURT: And I'll just confirm that the amended
11 agent affidavit that was submitted to me on March 16 does have
12 your signature line on page 25. We're now considering the
13 second amended warrant application, submitted on March 27,
14 which has your signature line on page 26. And as Mr. Ward
15 indicated, I believe there is just one additional post that is
16 added to this application, but I want to make sure that you are
17 swearing to the application that's being presented to me.

18 [REDACTED]: Yes. Thank you, your Honor. I'll let you
19 know as soon as I receive it.

20 Alec, did you send it already?

21 MR. WARD: Yes.

22 [REDACTED]: OK. I'm standing by to receive it.

23 OK. Alec, I received your email. Can you tell me
24 what paragraph the renewed image of that is?

25 MR. WARD: The additional images, [REDACTED], are the

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1 ones we reviewed in our call-in preparation for this hearing.
2 They're on pages -- the second image on page 13 of this
3 document and the top of page 17 of this document.

4 [REDACTED]: Yes, your Honor. I am familiar with these
5 posts and discussed these with Alec Ward.

6 THE COURT: OK. Thank you.

7 Kindly raise your right hand, Agent [REDACTED].

8 [REDACTED]: Yes, your Honor. It's raised.

9 THE COURT: Do you solemnly swear that the information
10 contained in this affidavit is true and complete, so help you
11 God?

12 [REDACTED]: Yes, your Honor, I do.

13 THE COURT: OK. And do you authorize me to sign this
14 electronically on your behalf?

15 [REDACTED]: Yes, your Honor, I do.

16 THE COURT: OK. I will go ahead and include your
17 signature and sign the agent affidavit for the second amended
18 search warrant application, and this will become part of the
19 record.

20 All right. I understand, Mr. Ward, from this
21 application that the threat at issue in this case is the
22 statement, "Katrina Armstrong, you will not be allowed peace"
23 Is that correct?

24 MR. WARD: I would say alongside the transmission of
25 the image of the Columbia University president's residence

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1 spattered with a substance simulating blood and marked with the
2 inverted triangle symbol, collectively, that transmission
3 constitutes the utterance under investigation.

4 THE COURT: Understood. Great. And context does
5 matter.

6 In *United States v. Garnes*, 102 F.4th 628, which is a
7 Second Circuit decision from 2024, the Court of Appeals
8 explained that, "the literal threatening words may take on
9 greater or lesser seriousness from the additional statements
10 that surround them."

11 I'm also relying on *United States v. Segui*, 2009 WL
12 8487291, a citation from the Eastern District of New York from
13 December 2, 2019, where the court found that events in the
14 "days leading up to and the day after the threat would
15 constitute direct evidence as to whether an ordinary recipient
16 would interpret the communication as a threat."

17 I understand that the statement at issue here that you
18 attribute to CUAD is "Katrina Armstrong, you will not be
19 allowed peace," read in the context of the posting of this
20 image, which includes the inverted triangle, you believe that
21 that constitutes a threat.

22 Is that correct?

23 MR. WARD: I think it may even be slightly more
24 nuanced than that under these circumstances, your Honor.

25 For the true-threats analysis, the purpose -- I don't

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1 want the condition that the statement "you will not be allowed
2 peace" is sort of the absolute necessary condition. I think
3 under the right circumstances -- obviously, the blood spatter
4 and the defacement of the residence are not transmissions in
5 interstate commerce; those were done face to face in Manhattan
6 by people with paint. But I think under the right
7 circumstances it would be possible even for an uncaptioned
8 image of that threat if retransmitted with the intent to
9 intimidate, interfere or place a person in fear, with the
10 intent to communicate an expression of intent to commit
11 unlawful violence, the image itself could be sufficient to
12 present probable cause under these circumstances for the 875(c)
13 offense. But I think here our contention is it's the image and
14 the -- the image and the caption taken together.

15 THE COURT: The statute criminalizes communications,
16 right? That's all that the statute criminalizes. Agreed?

17 MR. WARD: Yes. Yes, your Honor.

18 THE COURT: The case law, including very recent Second
19 Circuit case law, talks about how context matters. And so I
20 understand that the application is that in the context of that
21 image, the statement "you will not be allowed peace" could be
22 interpreted as a true threat. But the communication at issue
23 here is simply that statement, "you will not be allowed peace."
24 You're not arguing that the image is the communication.

25 MR. WARD: I think we're arguing that the image

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1 (inaudible) the communication, but under these circumstances,
2 the communication is the image alongside the statement.

3 Maybe an analogy to a more familiar fact pattern from
4 my office might help. (inaudible) have routinely prosecuted --
5 I'm not saying that the conduct is exactly equivalent, but
6 symbolic -- in terms of symbolic threats -- my office has
7 routinely prosecuted, under various threat statutes, the
8 burning of crosses outside (inaudible) residences. Were such
9 an event videotaped and posted online, (inaudible) would
10 (inaudible) but with, under certain (inaudible) suggesting an
11 intent to communicate that, to send that communication, that
12 video, to someone who would be threatened by it, I think we
13 would take the position under that case that the posting and
14 the transmission of the video itself could be a prosecutable
15 threat under 875(c) even in the absence of any words, text.

16 Likewise, in (inaudible) graffiti, which we've also
17 seen an uptick in lately, if (inaudible) graffiti is
18 photographed and transmitted to someone and without additional
19 verbal communication, written words, a commission, we would
20 take the position, could be communication of a threat to
21 injure.

22 THE COURT: OK. Understood.

23 I will consider the communication at issue to be the
24 statement "you will not be allowed peace" and the inverted
25 triangle that was depicted on the video.

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1 In *Counterman v. Colorado*, which is a directly
2 relevant case from the Supreme Court, which I'll note you did
3 not cite to me in your email, it addressed what constitutes a
4 true threat: "True threats are serious expressions conveying
5 that a speaker meant to commit an act of unlawful violence."

6 In that case as well as in *Elonis v. United States*,
7 which is a 2015 Supreme Court case, the Supreme Court clarified
8 that "the existence of a threat depends not on the mental state
9 of the author but on what the statement conveys to the person
10 on the other end." In other words, the Supreme Court has
11 explained: "Whether the speaker is aware of and intends to
12 convey the threatening aspect of the message is not part of
13 what makes a statement a threat. Only when the statement is
14 understood as a true threat does it fall outside of the
15 protections of the First Amendment."

16 Mr. Ward, is there anything in the agent affidavit
17 that states how Ms. Armstrong has interpreted this statement?

18 MR. WARD: There's not, your Honor. And I don't -- I
19 don't dispute the relevancy of the reaction of the recipient.
20 And I think *Counterman* and *Elonis* and a long line of
21 true-threat cases establish that the reaction of the threat
22 recipient is highly relevant to the true-threats analysis. I
23 think what -- I'm familiar with the *Counterman* case, and the
24 (inaudible) that the Supreme Court set in *Counterman* resolved
25 this predictive split about the *mens rea* out -- or the *mens rea*

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1 requirement for (inaudible), including 875(c), and established
2 that the required minimum showing by the government is that the
3 communicator acted at least with reckless disregard as to
4 whether the communication would be taken as a threat. That is,
5 I think, precisely the kind of evidence that there is probable
6 cause to believe this warrant, if issued, might develop. We --
7 I will not represent to your Honor at this point that we
8 have -- we have evidence showing the communicator's state of
9 mind, but the warrant, if issued, I think, is highly likely to
10 provide relevant and admissible evidence on that point.

11 THE COURT: OK. But you have no information at this
12 stage in the investigation about how Ms. Armstrong interpreted
13 the statement, correct?

14 MR. WARD: We have not had an opportunity to put that
15 question directly to Ms. Armstrong at this point.

16 THE COURT: Have you spoken to her about this
17 application and about your threat concerns?

18 MR. WARD: My understanding -- and this is
19 secondhand -- is that the FBI, upon learning of this post,
20 communicated with the president's office at Columbia, conveying
21 its belief that the threat should be taken seriously from a
22 security standpoint. I do not know whether Ms. Armstrong
23 expressed feelings on that point, but I do know -- I've been
24 told by people who were involved in those conversations that
25 the FBI alerted the Columbia president's office that it

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1 considered this as a threat.

2 THE COURT: OK. Thank you.

3 All right. I don't need to go over the legal research
4 that I've done on my end to evaluate and consider these
5 applications. I've certainly read the four cases that you
6 submitted to me. I'll just state that I think some of your
7 representations were not fully, did not clearly represent what
8 the case law is, including your representation that the case
9 *Malik* stands for the proposition that the test is an objective
10 one, just like you included in your email to me.

11 As you've just indicated, the Supreme Court over the
12 last ten years has made clear that there's both an objective
13 and subjective element to the statute. And there have been a
14 number of cases out of the Second Circuit making clear exactly
15 what sort of speech constitutes a true threat. I cited to you
16 the *Garnes* case, which is just from last year, which makes
17 clear that words that may reflect heated rhetoric, in the
18 context in which they are made would not reasonably engender
19 fear, do not constitute a true threat.

20 I've reviewed the agent affidavit alongside of these
21 cases. I understand the argument that's being presented and
22 the view that that statement of "there will be no peace"
23 alongside the symbol that is used, as the agent represents, by
24 Hamas as part of its propaganda, including to designate targets
25 for attack, but there's no evidence here that that symbol is

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1 being used here in the United States to designate an act of
2 violence.

3 When I spoke with the AUSA in between the first and
4 the second applications, I asked that specific question,
5 whether there was any evidence indicating that that inverted
6 triangle was being used here in the United States specifically
7 as a call to violence or whether there's been any examples of
8 that triangle being identified and a subsequent act of violence
9 following. And there hasn't been any presentation presented to
10 me demonstrating that. In fact, the presentation seems that it
11 has been co-opted as part of the protest movement here, but as
12 to the specific issue of a threat of violence, the government
13 hasn't met its burden to establish that that symbol, in the
14 context here and in the context of the statement that the
15 president of Columbia University will not have peace, is a true
16 threat, as the law identifies. And so I stand by my initial
17 position. I do not believe the government has established
18 probable cause that the user of the Instagram account has
19 violated 18 U.S.C. Section 875(c), because it hasn't
20 established that a true threat was made.

21 That is my final decision. As I indicated, to the
22 extent you believe an appeal is warranted, you must set forth a
23 legal basis for doing so. Any subsequent application for a
24 warrant to search this Instagram account must include a copy of
25 this transcript for that court's consideration.

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1 I will grant the government's request to seal this
2 transcript and the docket for 90 days in light of the potential
3 threat in continuing the investigation on the matter.
4 Obviously, to the extent you are submitting this transcript to
5 another court, as I've directed, you don't need to make an
6 application to unseal it for that purpose.

7 Any further applications, Mr. Ward?

8 MR. WARD: Understanding your Honor's ruling, I'd like
9 to make a brief record on the government's position on a
10 procedural matter relevant to the true-threats analysis here,
11 with leave of Court, just for my record, since we are making a
12 transcript.

13 THE COURT: OK.

14 MR. WARD: The government submits that it's premature
15 for the Court to engage in a true-threats analysis at this
16 stage in the proceeding. The test for whether a statement or a
17 writing constitutes a true threat is, it's nuanced, it's
18 contextual, highly fact-bound. A wide range of circumstances
19 may bear on whether a given utterance or transmission satisfies
20 that legal standard. When the government seeks a warrant to
21 investigate whether sufficient evidence exists to establish
22 that a statement that can rationally be perceived as a threat
23 is prosecutable or protected, it's our position that a court
24 reviewing a warrant in that posture need not, and indeed may
25 not, undertake to perform the highly fact-bound true-threats

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1 analysis, and binding Second Circuit precedent reserves that
2 question for trial jury.

3 The government's position is that the First Amendment
4 protection for political hyperbole, abstract -- (inaudible)

5 It's the government's position that where a statement
6 can rationally be taken as threatening unlawful harm to a
7 particular person, the First Amendment's protection for
8 political hyperbole, abstract advocacy of violence -- here,
9 satire and sarcasm -- supply a constitutional defense available
10 at trial, not a legal immunity from investigation or
11 prosecution.

12 When the court, as here, reviews an application for a
13 search warrant to investigate a possible threat (inaudible) one
14 to decide whether the sworn representations in the application
15 establish probable cause to believe that a crime has been
16 committed, under the totality of the circumstances, and using
17 nonformalized fair probability assessments from probable cause
18 case law, the government submits that the application before
19 your Honor easily clears that low threshold and should be
20 granted.

21 THE COURT: Thank you. I appreciate your statements.

22 I obviously reviewed the cases that you submitted, and
23 those cases discuss the role of the judge and the jury at
24 trial. Obviously, that's a different question than what's
25 presented before me here. My analysis is to determine whether

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1 or not there is probable cause to believe that a crime has been
2 committed. For the reasons that I've stated, I don't think the
3 government has met its burden here.

4 I appreciate your record.

5 All right.

6 MR. WARD: Understood.

7 THE COURT: Anything further, Mr. Ward?

8 MR. WARD: Not at this time from the government, your
9 Honor.

10 THE COURT: OK.

11 All right. As I indicated, this transcript will be
12 filed under seal. I'll direct that the government order a copy
13 of the transcript and submit it to my chambers so I can make
14 sure that it is docketed on the case matter that has been
15 opened for this case.

16 Again, to the extent you believe that there is an
17 opportunity to file an appeal, such appeal should include a
18 copy of this transcript so that that judge understands what the
19 Court's ruling is.

20 All right. Thank you, everybody.

21 We're adjourned.

22 (Adjourned)
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25